



36 JPW

Appl. No. : 09/692,029
Applicant : Handa
Filed : October 19, 2000
TC/A.U. : 3628
Examiner : Nguyen, Nga B

Docket No. : ICOR-002-CIP
Customer No. : 26137
Confirm. No. : 5431

Certificate of Mailing or Transmission

I hereby certify that this paper and all enclosures referred to therein are being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, or being facsimile transmitted to the USPTO, on the date indicated below:

Name: Michael McGuire

Date: January 12, 2006

Signature: 

Fax Number (if applicable):

Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

PETITION TO WITHDRAW HOLDING OF ABANDONMENT
UNDER 37 CFR 1.181

Sir:

Applicant requests withdrawal of a holding of abandonment for the above-identified patent application on the following grounds:

The Examiner issued an Office Action on August 25, 2004.

Applicant filed a response on January 5, 2005 with a petition for a two-month extension of time in which to reply, together with a confirmation postcard

The mailroom at the U.S. PTO date stamped the confirmation postcard on January 10, 2005, and returned it to Applicant's undersigned attorneys. Accordingly, the response was received within the time period covered by the petition for a two-month extension of time, which expired January 25, 2005.

The response contained an error in the application number, which was given as 09/629,029, whereas the correct application number is 09/692,029. Nevertheless, the response was further identified by the applicant name, filing date, art unit, Examiner name, docket number, and confirmation number, and accordingly should have been matched up with the correct file.

On March 14, 2005, the U.S. PTO issued a Notice of Abandonment for failure to reply to the Office Action.

On March 17, 2005, a paralegal at the office of Applicant's Attorneys called the Examiner, who agreed that an appropriate course of action would be to fax a copy of the timely filed reply together with a copy of the date stamped confirmation postcard

received from the U.S. PTO. A copy of the fax sent on March 17, 2005 is enclosed herewith.

On April 5, 2005, a paralegal at the office of Applicant's Attorneys called the same Examiner to follow up, and was advised by the Examiner that she received the fax and will withdraw the holding of abandonment. A copy of an e-mail memo regarding this conversation is enclosed herewith.

A paralegal at the office of Applicant's Attorneys left voicemails to the same Examiner on May 4, 2005 and again on November 21, 2005 to inquire regarding the Examiner's review of the response but did not receive a return call.

A paralegal at the office of Applicant's Attorneys on January 6, 2006 called another Examiner at the U.S. PTO and learned that the holding of abandonment was not withdrawn. Accordingly, Applicant's Attorneys are submitting the present petition.

On January 12, 2005, the supervisory Examiner in Art Unit 3628 advised Applicant's Attorneys by voicemail that the Art Unit will not be able to reinstate this application due to a change in PTO internal policies which necessitate filing of a petition.

In support of this petition, Applicant encloses a copy of the March 17, 2005 facsimile letter to the Examiner, to which are attached (1) a copy of the response as filed and, (2) a copy of a stamped postcard received from the U.S. PTO.

Applicant submits that, in view of the date stamped postcard, there can be no doubt that the response was in fact received at the U.S. PTO.

Applicant further submits that, although an incorrect application number was given in the response, the response contained such other identifying information that would enable the U.S. PTO to match the response to the file, and the failure to so match the response is due to a U.S. PTO error.

Applicant believes Applicant was entitled to rely on the Examiner's positive statement that the holding of abandonment would be withdrawn, particularly as a withdrawal upon presentation of evidence of timely filing such as a data stamped postcard for years has been routine practice at the U.S. PTO in light of the well-known deficiencies in U.S. PTO mailroom operations. Applicant further believes that the Examiner had an obligation to advise Applicant if she later determined that she could not withdraw the holding of abandonment without a petition, had an obligation to reply in some form to the written communication filed by facsimile on March 17, 2005, and further had an obligation to reply to the follow up voicemails. Applicant's Attorneys were advised only on January 12, 2006 to seek recourse to a petition.

For the foregoing reasons, Applicant submits that this petition is timely filed.

Applicant believes that no petition fees should be due as this is a petition to correct a U.S. PTO error. However, if the U.S. PTO should find that petition fees are due, the Commissioner is hereby authorized to charge any required petition fees to **Deposit Account No. 19-2385.**

Respectfully submitted,

Skadden, Arps, Slate, Meagher & Flom LLP

By 

Andrew F. Strobert Reg. No. 35,375

Guy Perry Reg. No. 46,194

Tel.: 212-735-3000

Enclosure

MESSAGE CONFIRMATION



03/18/2005 08:47
ID=SKADDEN ARPS

DATE	S,R-TIME	DISTANT STATION ID	MODE	PAGES	RESULT
03/18	02:57"	703 308 3691	CALLING	012	OK 0000

03/18/2005 08:43 SKADDEN ARPS → 917033083691#053460

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SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

FOUR TIMES SQUARE
NEW YORK 10036-6522

TELEPHONE No.: (212) 735-3000
FACSIMILE No.: (212) 735-2000

EMAIL: mmcguire@skadden.com

FROM: Michael McGuire
DIRECT DIAL: 212-735-4104
DIRECT FACSIMILE: 917-777-4104

DATE: March 17, 2005
FLOOR/OFFICE No.: 26-124
053460-2

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CITY: Arlington, VA
FACSIMILE No.: 703-308-3691

FIRM: U.S. Patent and Trademark Office
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SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

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Job # 1

8⁴³/_A / 8⁴⁷/_A



FROM: Michael McGuire
DIRECT DIAL: 212-735-4104
DIRECT FACSIMILE: 917-777-4104

DATE: March 17, 2005
FLOOR/OFFICE No.: 26-124
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TOTAL NUMBER OF PAGES INCLUDING COVER(S): 12

PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

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CITY: Arlington, VA
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MESSAGE: **Please See Attached Copy of Amendment and Response for Serial No. 09/692,029**

Dear Examiner Nguyen:

As discussed today, we attach a copy of our response to Office Action filed January 5, 2004 and a copy of our confirmation postcard returned by the U.S. PTO.

Best regards, Michael McGuire, Legal Assistant

Assistant Commissioner
For Patents
Washington, D.C. 20231



Patent Department
Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, N.Y. 10036

Attn: Michael Reppin 26-125

<input type="checkbox"/> Express Mail No. <u>09/629,029</u>		<input type="checkbox"/> First Class Mail: Date Mailed <u>1/5/05</u>
Serial No. <u>09/629,029</u>		Filed: <u>1/10/05</u>
Inventor(s): <u>Flashty</u>		
Title: _____		
<input type="checkbox"/> Fee Calculation and Authorization ...	<input type="checkbox"/> Utility Application _____ pages, including Abstract _____ sheets Drawings	
<input type="checkbox"/> Transmittal Form	<input type="checkbox"/> Design Application	
<input type="checkbox"/> Notice of Appeal	<input type="checkbox"/> Provisional Application	
<input type="checkbox"/> Appeal Brief	<input type="checkbox"/> Petition for Extension of Time	
<input type="checkbox"/> Assignment w/ Recordation Cover Sheet	<input type="checkbox"/> Request for Continued Prosecution (RCE)	
<input type="checkbox"/> Declaration and Power of Attorney	<input type="checkbox"/> Response to Missing Parts Notice w/ Notice	
<input type="checkbox"/> Information Disclosure Statement	<input checked="" type="checkbox"/> Response/Amendment () w/Appendices	
<input type="checkbox"/> List of References (1449) () w/References	<input type="checkbox"/> Response to Invitation to Correct Defects	
<input type="checkbox"/> Issue Fee Transmittal	<input type="checkbox"/> Revocation and Power of Attorney	
<input type="checkbox"/> Non Publication Request	<input type="checkbox"/> Submission of Formal Drawing(s)	
<input type="checkbox"/> Req. to Rescind Non-Publication Request	____ Sheet(s) Formal Drawing(s)	
<input type="checkbox"/> PCT Request <input type="checkbox"/> PCT Demand		
OTHER: _____		
Atty: Docket No. <u>1608-002-CLP</u>		Attorney <u>A. J. Shurt</u>



Appl. No. : 09/629,029
Applicant : Handa et al.
Filed : 09/19/2000
TC/A.U. : 3628
Examiner : Nguyen, NGA B

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Name: Michael McGuire

Date: January 5, 2004

Signature: 

Fax Number (if applicable):

Commissioner of Patents and Trademarks
c/o Technology Center 3600
Washington, D.C. 20231

RESPONSE

Sir:

In response to the Office Action of August 25, 2004, Applicant submits the following response.

Petition for Extension of Time. A two month extension of time to respond to the above-identified Office Action is hereby requested. In the event that a further extension of time is required and Applicant has inadvertently overlooked the need to petition for such extension, the Applicant hereby petitions for such extension of time.

Fees. The Commissioner is hereby authorized to charge the following fees to Skadden Arps' deposit account 19-2385:

Petition fee for any petition identified above, including without limitation the two month extension of time to respond.

Any additional fees required in connection with this submission.

Amendments to the Claims are reflected in the listing of claims which begins on page 2 of this paper.

Remarks/Arguments begin on page 6 of this paper.

Amendments to the Claims:

This listing of claims will replace all prior versions, and listings, of claims in the application:

1. (Amended) A method for the trading of financial instruments between at least a first party and a second party of tracking, with the aid of a computer system, [of tracking mutual put] credit requirements for mutual puts, the mutual puts having an option by at least one said party to unwind said financial instrument in the future [for the trading of financial instruments between at least a first party and a second party], comprising:

storing a first set of mutual put requirements associated with said first party for trades with said second party;

storing a second set of mutual put requirements associated with said second party for trades with said first party;

at least one of said first set of mutual put requirements and said second set of mutual put requirements requiring the ability to unwind said financial instrument in the future;

receiving a trade indication identifying said first party and said second party; and

calculating a set of mutual put parameters based on said first set of mutual put requirements and said second set of mutual put requirements.

2. (Original) The method of claim 1 further comprising:

facilitating the display of said set of mutual put parameters to said first party and said second party.

3. (Original) The method of claim 1 further comprising:

providing a confirmation screen to each of said first party and said second party, said confirmation screen including said calculated set of mutual put parameters.

4. (Original) The method of claim 3 further comprising:

receiving a confirmation indication from each of said first party and said second party.

5. (Original) The method of claim 4 wherein said trade indication is associated with a trade; said confirmation indication being selected from the group consisting of confirm said mutual put parameters, renegotiate said mutual put parameters or cancel said trade associated with said trade indication.

6. (Original) The method of claim 5 further comprising:
in response to receiving said renegotiate mutual put parameter confirmation indication,

receiving mutual put data, and

verifying that said mutual put data satisfy said first set of mutual put requirements and said second set of mutual put requirements.

7. (Original) The method of claim 1 wherein said first party and said second party trade a plurality of financial instruments, said method further comprising:

for each said financial instrument traded between said first party and said second party,

storing a first set of mutual put requirements established by said first party for trades with said second party, and

storing a second set of mutual put requirements established by said second party for trades with said first party,

whereby each said financial instrument traded between said first party and said second party may have different bilateral mutual put requirements.

8. (Cancelled).

9. (Amended) The method of claim 1 [8] wherein said mutual put requirements comprise:

a first look for exercising said option to unwind said financial instrument.

10. (Original) The method of claim 9 wherein said mutual put requirements further comprise:

a minimum period after said first look for exercising said option to unwind said financial instrument.

11. (Original) The method of claim 9 wherein said mutual put requirements further comprise:

a maximum period after said first look for exercising said option to unwind said financial instrument.

12. (Original) The method of claim 11 wherein said calculation of said set of mutual put parameters comprises:

calculating the minimum of (said first look of said first set of mutual put parameters and said first look of said second set of mutual put parameter); and

calculating the minimum of (said maximum period of said first set of mutual put requirements and said maximum period of said second set of mutual put requirements).

13. (Original) The method of claim 11 wherein said mutual put requirements further comprise:

a last time for exercising said option to unwind said financial instrument.

14. (Original) The method of claim 10 wherein said calculation of said set of mutual put parameters comprises:

calculating the minimum of (said first look of said first set of mutual put parameters and said first look of said second set of mutual put parameter); and

calculating the maximum of (said minimum period of said first set of mutual put requirements and said minimum period of said second set of mutual put requirements).

15. (Original) The method of claim 1 further comprising:

generating a report of mutual put parameters for trades entered into by said first party.

16. (Amended) A method, with the aid of a computer system, of enforcing mutual put credit requirements for the trading of financial instruments between at least a first party and a second party, the mutual puts having an option by at least one said party to unwind said financial instrument in the future, comprising:

storing a first set of mutual put requirements associated with said first party for trades with said second party;

storing a second set of mutual put requirements associated with said second party for trades with said first party;

at least one of said first set of mutual put requirements and said second set of mutual put requirements requiring the ability to unwind said financial instrument in the future;

receiving a trade indication identifying said first party and said second party, said trade indication further including a negotiated set of mutual put parameters; and

verifying that said negotiated set of mutual put parameters satisfy said first set of mutual put requirements and said second set of mutual put requirements.

17. (Amended) A system for enforcing mutual put requirements among at least a first party and a second party trading at least one financial instruments, the mutual puts having an option by at least one said party to unwind said financial instrument in the future, comprising:

a database, said database storing:

a first set of mutual put requirements established by said first party for trades with said second party; and

a second set of mutual put requirements established by said second party for trades with said first party;

at least one of said first set of mutual put requirements and said second set of mutual put requirements requiring the ability to unwind said financial instrument in the future;

an interface adapted to receive a trade indication from a trading system, said trade indication identifying said first party and said second party; and

a server coupled to said interface and said database, said server adapted to receive said trade indication from said interface, said server further adapted to calculate a set of mutual put parameters, said calculation based on said first set and said second set of mutual put requirements.

18. (Original) The system of claim 17 further comprising:

a display terminal associated with at least one of said first party and said second party;

said server further adapted to display a confirmation screen on said display terminal.

19. (Original) The system of claim 17 wherein said first set of mutual put requirements and said second set of mutual put requirements are stored in said database as a two dimensional table of calculated mutual put parameters.

RESPONSE

Claims 1-7 and 15-19 were rejected under 35 U.S.C. § 102(a) as being anticipated by U.S. Patent No. 5,924,083 to Silverman et al. (hereinafter "Silverman") and claims 8-14 were rejected under 35 U.S.C. § 103 as being unpatentable over Silverman. Claim 8 has been cancelled. Claims 1, 9, 16 and 17 have been amended to more clearly recite Applicant's invention. Accordingly, upon entry of this Amendment, Claims 1-7 and 9-19 will be pending.

Each independent claim (claims 1, 16 and 17) has now been amended to recite that (a) the mutual put provides an option by at least one party to unwind the financial instrument in the future (see original claim 8), and (b) at least one of the mutual put requirements requires the ability to unwind the financial instrument in the future. For the reasons discussed below, each independent claim, and all claims dependent on such independent claims, are believed patentable over the prior art.

As noted in Applicant's Specification, Silverman "describes a distributed trading system for displaying a credit-filtered view of markets for financial instruments based upon credit limits entered by the trading parties. Each trading entity initially enters credit information which consists of the amount of credit that the trading entity is willing to extend to other trading entities for one or more types of trading instruments. Each trading entity may also create group credit limits by which the trading entity may limit the amount of credit it is willing to extend to a group of potential counterparties." (Specification, p. 2). However, as the Office Action acknowledges, Silverman does not disclose "an option by at least one party to unwind the financial instrument in the future." (OA ¶ 6).

The Office Action asserts that such feature is well known in the art and it would have been obvious to one of ordinary skill in the art to modify Silverman to include such an option to unwind the financial instrument "for the purpose of providing the trading entity the ability to unwind the financial instrument in the future, thus the trading entity has the opportunity to evaluate the counterparty's credit worthiness at the future date." Id.

However, the purpose of the claimed invention is not to provide a trading entity the ability to unwind the financial instrument – that function is already a part of the

financial instrument itself. Rather, the purpose of the claimed invention is to enforce mutual put requirements, where at least one of the parties requires the ability to unwind the financial instrument in the future. Silverman does not teach or describe such mutual put requirements or the ability to enforce such requirements; nor would one of ordinary skill in the art have been motivated to modify Silverman to construct a system to enforce such requirements. Accordingly, each independent claim (claims 1, 16 and 17) is believed patentable over the prior art.

Dependent claims 9, 10, 11 and 13 further recite that the mutual put requirements comprise, a first look for exercising such option, a minimum period after the first look to unwind the option, a maximum period after the first look to unwind the option, and a last time to unwind such option, respectively. As the Office Action acknowledges, Silverman does not disclose a system for enforcing such requirements. (OA ¶ 6). Applicant submits that one of ordinary skill in the art would not have been motivated to modify Silverman to construct a system to enforce such requirements. Accordingly, dependent claims 9, 10, 11 and 13 are believed further patentable over the prior art.

Dependent claims 12 and 14 further recite calculating the minimum of the first look requirements and the maximum of the maximum period requirements. The Office Action acknowledges that neither of these are disclosed by Silverman. (OA ¶ 6). Applicant submits that one of ordinary skill in the art would not have been motivated to modify Silverman to calculate such minimum and maximum periods. Accordingly, dependent claims 12 and 14 are believed further patentable over the prior art.

* * *

In view of the forgoing supporting remarks, Applicant respectfully request allowance of claims 1-7 and 9-19.

If the Examiner wishes to direct any questions concerning this application to the undersigned Applicant's representative, please call the number indicated below

Respectfully submitted,

Skadden, Arps, Slate, Meagher & Flom LLP

By



Andrew F. Strobert Reg. No. 35,375

Guy Perry Reg. No. 46,194

Tel.: 212-735-3000



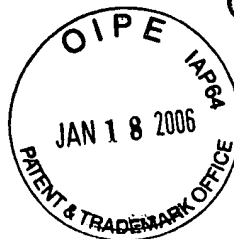
☐ Express Mail No. 09/629,019 ☐ First Class Mail: Date Mailed 1/5/05
Serial No. 09/629,019 Filed: _____
Inventor(s): H. Smith
Title: _____

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|---|---|
| <input type="checkbox"/> Fee Calculation and Authorization
<input type="checkbox"/> Transmittal Form
<input type="checkbox"/> Notice of Appeal
<input type="checkbox"/> Appeal Brief
<input type="checkbox"/> Assignment w/ Recordation Cover Sheet
<input type="checkbox"/> Declaration and Power of Attorney
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<input type="checkbox"/> Non Publication Request
<input type="checkbox"/> Req. to Rescind Non-Publication Request
<input type="checkbox"/> PCT Request <input type="checkbox"/> PCT Demand | <input type="checkbox"/> Utility Application ___ pages, including
Abstract, Claims: ___ sheets Drawings
<input type="checkbox"/> Design Application
<input type="checkbox"/> Provisional Application
<input type="checkbox"/> Petition for Extension of Time
<input type="checkbox"/> Request for Continued Prosecution (RCE)
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<input checked="" type="checkbox"/> Response/Amendment () w/Appendices
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<input type="checkbox"/> Revocation and Power of Attorney
<input type="checkbox"/> Submission of Formal Drawing(s)
___ Sheet(s) Formal Drawing(s) |
|---|---|

OTHER: _____

Atty: Docket No. 1608-002-CIP Attorney A. Stohr

From: Michael McGuire
To: Strobert, Andrew
Date: 4/5/05 10:46AM
Subject: ICOR-002-CIP



Andy:

We had received a Notice of Abandonment, and on March 17, 2005 I faxed to Examiner Nguyen a copy of our January 5, 2005 response together with a copy of the confirmation postcard.

I spoke to Examiner Nguyen today and she confirmed that she received the fax and will withdraw the abandonment.

Michael

5/4/05 left vm at 571-272-6796
11/2/05 left vm.

- Examiner Nguyen

→



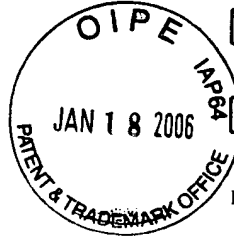
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/692,029	10/19/2000	Michiya Handa	ICOR-002 CIP	5431

26137 7590 03/14/2005

PATENT DEPARTMENT
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
FOUR TIMES SQUARE
NEW YORK, NY 10036

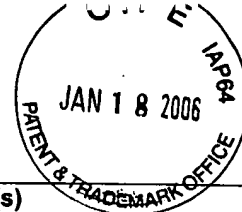


EXAMINER	
NGUYEN, NGA B	
ART UNIT	PAPER NUMBER

3628

DATE MAILED: 03/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



Notice of Abandonment

Application No.

09/692,029

Examiner

Nga B. Nguyen

Applicant(s)

HANDA ET AL.

Art Unit

3628

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 25 August 2004.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

Nga Nguyen

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.